

Serial No.: 09/057,313
Attorney Docket No.: 033449-002
Amendment

GI
found
and coupling said ramp to said marine vessel such that said lip is located adjacent to and inwardly of said rail and such that said ramp extends between said vessel and a loading dock.

Remarks

Claim 36 has been canceled, and claim 40 has been amended. A marked-up copy of the amended claim, identifying the changes thereto, accompanies this Amendment. Review and reconsideration of the application is respectfully requested.

Claim 40 has been amended to change the term "rail with a downwardly depending lip" to "ramp with a downwardly extending lip" as requested in the Office action.

Claims 16-19, 21, 22 and 22-40 are rejected as allegedly defining obvious subject matter over U.S. Pat. No. 4,325,667 to Freeman in light of U.S. Pat. No. 3,691,595 to Backteman et al and U.S. Pat. No. 4,201,511 to Charles. This rejection is traversed for the reasons discussed below.

As noted in the Office action, the Freeman reference discloses lifting strapped pallets and transporting the strapped pallets onto a ship via a forklift. The Office action notes that the Freeman reference does not disclose using a container having a set of outer walls defining an inner volume. The Office action then indicates that the Backteman reference discloses the use of freight containers with outer walls defining an inner opening, and takes the position that it would have been obvious to one of ordinary skill in the art to modify the device of the Freeman reference to use the containers of the Backteman reference.

However, it is submitted that one of ordinary skill in the art would not be motivated to use the container of the Backteman reference in the system of the Freeman reference. In particular, the Freeman reference discloses stacking and storing the pallets of that system inside containers that are rolled onto the barge of that reference. The forklift of the Freeman reference drives into the doors of the boxcars 18, positions and stacks the freight in the boxcar, and exits the boxcar to obtain and load more freight. However, the containers of the Backteman reference are of comparable size to the boxcars of the Freeman reference, and are at least larger than the openings of the boxcars of the Freeman reference. In particular, the containers of the Backteman

Serial No.: 09/057,313
Attorney Docket No.: 033449-002
Amendment

reference are ISO standard containers (which are generally 20 or 40 foot long containers (see attached web page printout from www.conrail.de/conrail_container_standards_re.html)) or comparably sized containers (see column 1, line 35 of the Backteman reference).

Thus, if the containers of the Backteman reference were substituted for the palletized boxes or bags of the Freeman reference, the containers of the Backteman reference would not be able to be fit into the openings of the boxcars, and would not be stackable inside the boxcars of the device of the Freeman reference. Accordingly, if the Freeman reference were modified in the proposed manner, it appears that the boxcars 18 of that reference would have no use, and would have to be discarded to make room for the stacked containers. If the boxcars 18 were removed, then the runways 34 that extend between the boxcars 18 would also have to be removed and discarded because they would then serve no purpose. Furthermore, in order for the containers of the Backteman reference to be stacked on top of the deck of the barge 12 of the Freeman reference in a stable manner, the railroad tracks 14, 16 located on the deck of the barge of the Freeman reference would have to be removed.

Thus, under the modification proposed in the Office action, the boxcars 18 of the Freeman reference would be removed and discarded, the palletized freight 36 would be removed and discarded, the runways 34 that extend between the boxcars 18 would be removed and discarded, the railroad tracks 14, 16 on the barge would be pried up from the deck and discarded, and the forklift trucks 30 would be removed and discarded. The containers of the Backteman reference would then be used in place of the palletized freight, and the vehicles of the Charles reference would be used in place of the forklift trucks. At this point, the only structure that would remain from the system of the Freeman reference would be the barge and the ramp. It is submitted that this is a severe modification of the Freeman reference which changes the very nature and function of that system. It is therefore submitted that one of ordinary skill in the art would not be motivated to undertake such a severe redesign of the Freeman reference.

Furthermore, it is submitted that the Freeman reference teaches away from the proposed modification. At column 1, lines 9-14 of the Freeman reference, it is noted that an object of that patent is to provide a method and means for handling palletized freight between a production or

Serial No.: 09/057,313
Attorney Docket No.: 033449-002
Amendment

warehouse facility and a railhead while minimizing pallet handling. The device of the Freeman reference enables freight to be loaded onto a boxcar at a factory, and the loaded boxcar can then be transported via rail to a dock and then rolled directly onto the barge. This feature reduces forklift handling of the freight (see column 1, lines 20-39). At column 2, lines 34-36 of the Freeman reference it is noted that the method of the Freeman reference enables freight to be brought to existing railroads rather than requiring the building of new railroad facilities.

Thus, it is submitted that the proposed modification to the Freeman reference would destroy the primary benefit touted in the Freeman reference. The proposed modification requires freight to be loaded onto the barge by a vehicle (instead of rolling boxcars directly onto the barge). Thus, the resultant proposed system would require freight to be transported to a loading dock (i.e. by truck or train), and the freight would then have to be loaded onto the barge using a vehicle with a body portion and a gripping portion. The resultant system would thus not include rolling boxcars loaded with freight to be rolled onto or off of the barge, and would require an additional loading or unloading step. It is submitted that one of ordinary skill in the art would therefore not be motivated to modify the Freeman reference in the proposed manner, because to do so would change the basic teachings of that reference and change the principles of operation of the Freeman reference, and renders the system of the Freeman reference unsatisfactory for its intended purpose (see MPEP §2143.01).

Furthermore, it is submitted that one of ordinary skill in the art would not be motivated to use the container of the Backteman reference in the system of the Freeman reference. In particular, as noted at column 1, lines 20-24 of the Freeman reference, the freight handling method of the Freeman reference is especially adapted for the handling of sugar. The palletized sugar must be stored in some sort of an external container (in the illustrated case of the Freeman reference, a boxcar) to protect the palletized freight during transport. For example, the Freeman reference discloses that the palletized sugar is in boxed or bagged condition (column 2, lines 13-15) and thus it is clear that such palletized freight needs to be protected from the elements, such as rain. Thus, if one were to combine the Backteman and Freeman references in the suggested manner, the sugar of the Freeman reference would be loosely stored inside a large container of

Serial No.: 09/057,313
Attorney Docket No.: 033449-002
Amendment

the Backteman reference. However, storing sugar in an unsanitary, non-sealed, non-water tight container would severely compromise the quality of the transported sugar. Thus, it is submitted that one of ordinary skill in the art would not be motivated to use the containers of the Backteman reference in the system of the Freeman reference, because the proposed modification renders the system of the Freeman reference unsatisfactory for its intended purpose (see MPEP §2143.01).

Furthermore, it is submitted that even if the Freeman, Backteman and Charles references were combined in the proposed manner, the resultant claimed invention would not result. As specified in independent claims 16, 22, 24 and 25, the vehicle used to lift and transport the containers includes a spreader attachment. In order to operate the vehicle and spreader attachment, the spreader is spread, or expanded, until each distal end of the spreader is received in a receptacle in the container to be lifted or moved. Thus, the interaction between the expanded spreader and the receptacle enables the vehicle to releasably grasp the container. The gripping portion of the vehicle can then be raised to lift the gripped container.

Once the container is positioned at the desired location, the spreader attachment is retracted to pull the spreader out of the receptacles. The vehicle may then move to the next container to lift and move the container to the desired location in the same manner. Thus, for each container to be able to be gripped by the claimed vehicle, each container must include a receptacle to receive the spreader attachment. However, the containers of the Backteman reference do not include the required receptacles, and thus it is submitted that if the containers of the Backteman reference were used with the vehicle of the Charles reference, that the spreader of the Charles reference would be unable to grip, lift or move the containers of the Backteman reference. Accordingly it is submitted that one of ordinary skill in the art would not be motivated to combine the references in the proposed manner, because the resultant system would be inoperative.

Finally, it is submitted that the references cannot be combined in the manner proposed in the Office action. In particular, the Office action has apparently taken the position that the one of ordinary skill in the art would be motivated to use the vehicle of the Charles reference with the

Serial No.: 09/057,313
Attorney Docket No.: 033449-002
Amendment

system of the Freeman reference *as modified by the Backteman reference*. However, it is submitted that this is not the proper standard for combining references for obviousness. Instead, it is submitted that there must be some motivation or suggestion to combine the Freeman reference *by itself* with the Charles reference.

Thus, it is submitted that, in order for a proposed modification to be proper, it must be shown that one of ordinary skill in the art would be motivated to combine these references in their original form. If the Freeman reference were first attempted to be combined with the Charles reference, and the resultant system then attempted to be combined with the Backteman reference, it is submitted that the claimed invention would not result because the Freeman reference cannot be combined with the Charles reference in the proposed manner, as noted below. Under MPEP §2143, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. However, it is submitted that the Office action does not include any teaching or suggestion to modify the Freeman reference in the proposed manner in the order proposed in the Office action.

It is submitted that it would not have been obvious to one of ordinary skill in the art to modify the method of the Freeman reference to use the vehicle of the Charles reference. As noted above, each of independent claims 16, 22, 24 and 25 specify that the vehicle used to lift and transport the containers includes a spreader attachment. Thus, in order for each container to be able to be gripped by the claimed vehicle, the container must include a receptacle to receive the spreader attachment. However, the pallets of the Freeman reference do not include the required receptacles, and therefore cannot be used with the vehicle of the Charles reference. Furthermore, the "containers" of the Freeman reference are pallets with bagged or boxed sugar stored thereon. Thus, in order for a spreader attachment to be used, the spreader would somehow have to grip the pallets which are relatively small, narrow structures located below the bagged or boxed sugar. Accordingly, even if the pallets of the Freeman reference were somehow modified to include a receptacle (of which there is no teaching or suggestion), it would be difficult to use a spreader attachment due to the location and dimensions of the pallets. It is submitted that it is

Serial No.: 09/057,313
Attorney Docket No.: 033449-002
Amendment

easier and simpler to use a forklift with the pallets of the Freeman reference. Thus, it is submitted that one of ordinary skill in the art would not be motivated to use the vehicle of the Charles reference with the pallets of the Freeman reference, because the resultant system would be effectively inoperative.

Furthermore, it is submitted that one of ordinary skill in the art would not be motivated to modify the Freeman reference for use with the Charles reference, because to do so would render the Freeman reference unsatisfactory for its intended purpose. As shown in, for example, Fig. 1 of the Freeman reference, the pallets are stacked in boxcars 18 that are located on a barge 12. As shown in Fig. 4, the forklifts 30 are driven into the boxcars 18 through the doors 32 to deposit and stack the pallets 36 inside the boxcars 18. The relative dimensions between an operator and the size of an opening 32 are shown in Fig. 4, wherein it can be seen that the height of the openings 32 is, at most, about 1½ times the size of a standing operator.

In contrast, as shown in Fig. 1 of the Charles reference, the machine of that reference appears to stand about 2½ times the height of a standing operator. Thus, the machine of the Charles reference cannot fit into the boxcar openings of the Freeman reference. Furthermore, even if the machine of the Charles reference could somehow fit into the boxcars of the Freeman reference, the machine would not be able to maneuver inside the boxcars to place the pallets 36 at the desired locations. Finally, a spreader attachment requires some clearance on either side of the stacked item in order for the spreader attachment to expand and pull out of the receptacles, which is not provided inside the containers. Thus, it is submitted that one of ordinary skill in the art would not be motivated to use the machine of the Charles reference with the Freeman reference.

In sum, for the reasons discussed above, it is submitted that the Freeman, Backteman and Charles references cannot be combined in the manner suggested in the Office action, and it is requested that the rejection of the claims over the combined references be withdrawn.

This Amendment amends the application in accordance with the conversation between the undersigned and the Examiner on June 11, 2002. In that conversation, the Examiner indicated that the proposed amendment to claim 36 in the previously filed, non-entered

Serial No.: 09/057,313
Attorney Docket No.: 033449-002
Amendment

amendment filed on April 22, 2002 was the reason for the failure to enter that amendment. The Examiner indicated that if the non-entered amendment were to be resubmitted and claim 36 were to be canceled, such an Amendment would be entered. Thus, the present Amendment amends the application in the proposed manner.

A Notice of Appeal and appropriate fee accompany this Amendment.

In view of the foregoing amendments and arguments, the application appears to be in a condition for allowance, and a formal notice thereof is requested. The Commissioner is hereby authorized to charge any additional fees which may be required by this paper, or to credit any overpayment to Deposit Account 20-0809.

Respectfully submitted,



Steven J. Elleman
Reg. No. 41,733

THOMPSON HINE LLP
2000 Courthouse Plaza NE
10 West Second Street
Dayton, Ohio 45402-1758
(937) 443-6838

Serial No.: 09/057,313
Attorney Docket No.: 033449-002
Amendment

MARKED-UP COPY OF AMENDED CLAIMS

40. (Amended) The method of claim 16 wherein said marine vessel includes a rail extending along a deck of said ship, and wherein the method further comprising the steps of, before said lifting and transporting step, providing a [rail] ramp having a downwardly [depending] extending lip and coupling said ramp to said marine vessel such that said lip is located adjacent to and inwardly of said rail and such that said ramp extends between said vessel and a loading dock.

ConRail

307 701-101 0770.00.180111

HOME

CONTACT

ConRail GmbH, founded in the year 1986 by Mr. Jens Neubauer, has the ability to arrange all types of transport from and to Germany to destinations throughout the world. **ConRail** is renowned for its 'specialist service levels to companies who wish to use refrigerated containers (hot/cold). Our highly trained staff are able to provide speedy responses, expert technical advice and flexible lease terms to suit your

Following you will find the description and specification of our container equipment:

Minimum Requirements for ConRail Containers:

- * All containers comply with the standards for overall dimensions and corner castings
- * All containers exceed the minimum requirements for internal dimensions
- * Exposed timber is treated according to Australian requirements (exception: 40'-Flats and Platforms)
- * Container internal dimensions production, tolerances there is a difference in measurements possible:

Tolerance	Length	Width	Height
Max. difference	10 mm 3/8"	10 mm 3/8"	10 mm 3/8"

Standard Containers

Standard Specification ISO 668	Length		Width	Height	
Overall Dimensions	20' 6 058 mm	40' 12 192 mm	8' 2 438 mm	8' 2 438 mm	8'6" 2 591 mm
Int. Dimensions Standard Container	5 867 mm 19'3"	11 998 mm 39'4 3/8"	2 330 mm 7'7 3/4"	2 197 7'2 1/2"	2 350 7'8 1/2"
Door Opening Standard Container			2 286 mm 7'6"	2 134 mm 7'	2 261 mm 7'5"

- * Controlled fresh air supply is possible.
- * Walls in "sandwich-construction", with polyurethan foam. Floor with aluminium "T" grating as airduct.
- * Applicable power sources: 380 V / 50 Hz
- * The set temperatures can be kept as long as the difference between the ambient and cargo temperatures does not exceed the following limit:
42 deg. C (76 deg. F) heating and 65 deg. C (117 deg. F) cooling.
It switches automatically from heating to cooling and vice versa if

Special features:

Temperature setting range: + 65 deg. C to -50 deg. C with humidity control

Sound level will be reduced from: 66.5 dbA to 34dbA during cooling.

Special manufacturing/construction of units available e.g. explosion proof



Special customer requirements can also be catered for.

Construction	Inside dimensions			Door opening		Weights (kg)	
	Length mm	Width mm	Max. Stowage Height mm	Width mm	Height mm	Tare kg	M. Pay t
20'8'6"	5340	2200	2154	2200	2220	3380	20
40'8'6"	11548	2286	2115	2286	2200	4500	25

Tanks and Special Containers

Upon request, you will receive details by telephone
or fax and you can also visit our website

CONTACT

ConRail GmbH-An der Glinder Au 6-22115 Hamburg-Germany-Phone 004940 714 88 333-Fax 004940 714 88
info@conrail.de